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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,491	08/20/2003	Douglas J. Hidding	BMO-129	7409
61215	7590	01/11/2008		
DAVID I. ROCHE BAKER & MCKENZIE LLP 130 EAST RANDOLPH DRIVE CHICAGO, IL 60601			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 01/11/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/644,491	Applicant(s) HIDDING, DOUGLAS J.	
	Examiner Robin A. Hylton	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on November 20, 2006. These drawings are not approved. Applicant has incorporated by reference the disclosure of a cap for a 5-gallon water as set forth in US Patent 5,904,259 (Hidding). However, it is noted that the proposed drawing figures depict the cap differently in at least two aspects. The cap 62 of the instant drawings is not clearly shown in Hidding '259 and the engagement configuration of the inner cap is significantly different. Applicant should submit corrected drawings as illustrated in the above noted reference.

Claim Objections

2. Claims 1 and 15 are objected to because of the following informalities: the phrase "a at least" should read -- at least --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is unclear with regard to whether the label covers only a portion of the cap and the sleeve covers a portion of the cap or if the label and sleeve cover the same portion of the cap.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 19 - 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Scheidegger (FR 2,739,611). See drawing figures and English language abstract. Wherein the instant claims provide no specific structure for claim 20, the closure assembly of Scheidegger anticipates the claim.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1,2,7,15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salemi (US 5,524,782) in view of Marino, Jr. (US 5,605,230).

Salemi teaches a container **46** having a transfer ring **52** disposed below at least one cap engaging protrusion **48**, a bottle cap **50** having a circular cover and a depending skirt, and a shrink sleeve **58**. Salemi does not teach the sleeve has printing or coloring thereon.

Marino teaches it is known to provide a container assembly with a shrink sleeve that has printing on the sleeve (col. 1, lines 60-61), the printing giving the consumer information as desired by the manufacturer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of printing on the shrink sleeve of Salemi. Doing so provides additional information to the end user regarding the product contained in the container and/or tamper-evidence.

Regarding the blow-molding limitations of the container neck in claims 2 and 16, these are product-by-process claims and do not structurally limit the claimed invention.

Regarding the HDPE material of the container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of HDPE, since

it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

8. Claims 3-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 15 above, and further in view of Irish, Jr. (US 3,720,343).

Salemi as modified teaches the claimed closure arrangement except for sleeve engaging formations on the transfer ring of the container neck.

Irish teaches it is known to provide a container neck transfer ring with indentations thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of sleeve engaging formations in the form of indentations on the transfer ring of the container neck of Salemi. Doing so allows for better gripping between the container neck and the shrink sleeve as well as for better gripping of the container neck by the user's hand upon removal of the shrink sleeve.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Crum (US 5,022,526).

The claim is unclear with regard to whether the label covers only a portion of the cap and the sleeve covers a portion of the cap or if the label and sleeve cover the same portion of the cap. For the purpose of examination, it is considered that the label covers only a portion of the cap and the sleeve covers the label and the cap.

Salemi teaches the claimed closure arrangement except for a label, the label and sleeve covering substantially the exterior of the closure.

Crum teaches it is known to provide a label covering substantially the exterior of the cap at the top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a label to the closure arrangement of Salemi. Doing so provides instructions for the user regarding the use of the product contents in the container.

Response to Arguments

10. Applicant's arguments with respect to claims 19-22 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments filed February 22, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's remarks at page 13, paragraph 1 of the response that the printing of "Marino does not teach to add print or coloring to *signify the contents and or the supply of said container*", the examiner disagrees. While the teaching may not be explicitly stated as such one of ordinary skill in the art at the time of the invention would fully expect such teaching since it is known in the art. See Morgan ((US 2,121,041) for such known teaching.

Regarding the teaching of Irish, applicant asserts this teaching can not be applied to Salemi since the caps are different and more specifically, since the shrink sleeve of Irish serves

as the cap. This is not persuasive since the purpose of the indentations and the protrusions of the bumper roll of Irish further serves for firmer grasping of the bottleneck at or below the bumper roll. This will occur when the teaching is also applied to Salemi. Further, the indentations also allow for easier removal from the container mold.

Regarding the remarks of the of the form and formation of the indentations. There is no structural relationship set forth in the claims to define the "underside" of the bumper roll. Thus, the underside of the bumper roll is seen as the underside facing the bottom of the bottle. To that degree, the combination of the prior art as applied meets the claim limitations.

In response to applicant's argument page 16, paragraph 1 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the shrink sleeve only covers the edge of the cap and not the label) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim is unclear as to how the combination of the label and the shrink sleeve cover substantially the exterior of the cover. The structure is not set forth as the sleeve covers the edge of the cap and not the entire label.

Conclusion

12. In view of the new grounds of rejection to claims 19-22, this Office action is made non-final.

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the

references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

15. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
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- Internet PTO-Home Page <http://www.uspto.gov>

RAH
January 5, 2008

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